

when I offered the amendment in the Intelligence Committee. I very much thank him for his steadfastness.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Republican whip.

Mr. KYL. Mr. President, we are going to be voting in about an hour or so on the conference report on the Intelligence Authorization Act. I would like to explain briefly the reasons I think we should vote against that reauthorization.

There are two primary reasons. First has to do with the additional provision that was passed neither by the House nor by the Senate but was dropped into the conference report without Republican involvement; that is, the provision that Senator FEINSTEIN authored that would substitute for the authority that agencies of the United States currently have—agencies such as the Central Intelligence Agency—to interrogate foreign terrorists. It would substitute for the current rules under which they operate the U.S. Army Field Manual.

The U.S. Army Field Manual is a document that is prepared for use for all of our military Armed Forces, to provide rules of the road for them in interrogating enemy prisoners of war. So when they capture someone on the battlefield, in order to ensure that the Geneva Conventions are adhered to, there is a set of guidelines set out in the Army Field Manual that very explicitly explain to our soldiers exactly how they need to treat these prisoners and what kind of interrogation in which they can engage.

A couple of years ago, when the Congress and the administration got together and revised our procedures and the statute dealing with this subject, the explicit decision was made to not have the Army Field Manual govern the interrogations by other Government agencies. That was a wise decision then, and it is a wise decision now.

There are reasons the U.S. Army would want to have a set of rules for soldiers capturing enemies on the battlefield. But there is quite a different situation presented when you have captured a terrorist and you want to interrogate that terrorist and you have at your disposal Central Intelligence Agency trained personnel or other special personnel who are trained in interrogation techniques that comply with the Geneva Conventions accords, are not torture, are authorized by law, but may be outside the particular scope of the Army Field Manual.

This is a gross oversimplification, but for people to generally appreciate what I am talking about, you have all seen movies where a prisoner of war is captured, and they say: Give me your name, rank, and serial number, and that is pretty much all an enemy soldier is required to provide. You cannot torture them to get them to tell you anything beyond those three pieces of information, and that is as it should be.

Interestingly, our terrorist adversaries know well the Army Field Manual, and if they are captured as enemy POWs on the battle ground by U.S. Army personnel, they know precisely what kind of interrogation to expect. In fact, we know they are trained on how to resist the interrogation techniques and not provide information. It would be a horrible mistake for us to assume that the techniques that are appropriate for Army battlefield capture interrogation should apply as well to situations in which a CIA person is interrogating a terrorist—someone who is not fighting for another country in a uniform captured on the battlefield.

That is the essence of the Feinstein proposal, and it is one of the reasons the President has made it very clear that were this conference report to pass, he will veto the bill; indeed, he should.

There are other reasons for the President's decision to veto the bill as well. Let me just mention a couple of them. One of the things that relates to this interrogation matter is a requirement in the bill that a report to Congress must be made of the identity of each and every official who has determined that any interrogation method complies with specific Federal statutes, why the official reached the conclusion, and the related legal advice of the Department of Justice.

This may seem benign on the surface but, I submit, is in the nature of harassment of officials who are trying to make decisions about the application of law. They come to judgments. They advise the people who are asking for the advice, and then action is taken on that basis. If Congress needs a report every time a Government official makes a decision, clearly that agency cannot function.

Secondly, there are too many opportunities for second guessing, too much of an incentive for the people who are doing the work we ask them to do to not make any decisions, not engage in that work because they might make a mistake. This is exactly the kind of ethos we do not want in our intelligence community.

Another requirement of the bill is the creation of another inspector general. We already have inspectors general for each of the elements of the intelligence community, but there would be a new one under the DNI. But his primary responsibility would be to report to Congress rather than the DNI.

There are other requirements for reports that have already occupied far too much attention of our intelligence community. There are requirements for congressional confirmation of several new positions, positions that currently do not require congressional confirmation because they are not political offices. It is the head of the NRO, for example, the head of NSA. These are agencies that have been peopled with professionals, people who do not have anything to do with politics. They should not have to come to the

Senate and get grilled by Senators—more importantly, Senators who then might hold them up.

You have heard about the holds Senators place on nominees. I do not know how many executive nominees and judges we have waiting confirmation by the Senate right now, but there are a lot. What happens is, because Senator X does not like the administration's position on something, they decide to put a hold on an important executive branch nominee. As a result, too many positions are vacant today because of unrelated holds by Senators. It just presents the Senate with an additional way to hold up action on people, in effect, to blackmail an administration into doing what it wants.

There are a variety of other problems the President has pointed to in this legislation that will require the President to veto it. But I want to conclude by simply saying that a great deal of credit goes to Senators ROCKEFELLER and BOND for their work in trying to create an authorization bill for the intelligence community against great odds. There is a lot of disagreement among people on the Intelligence Committee itself, as well as others in this body, about what ought to be done, and they came to, in effect, an agreement that except for the Feinstein proposal—that, as I said, was added in the conference; it was not passed by either the Senate or the House—they came to an agreement on a bill that Senator BOND has described as pretty effective.

Hopefully, with the President now indicating he will veto the legislation over the provisions I have identified, and some others, the other side will recognize it is important to fix those problems, clean it up, get a bill back to the President he can sign, and we can move forward.

FISA

Now, the last thing, Mr. President, I want to do is change the subject very slightly because we just had a conversation with the President, who reiterated his deep concern about the apparent unwillingness of the House of Representatives to reauthorize the Foreign Intelligence Surveillance Act so that we can engage in intelligence collection against this country's worst enemies: al-Qaida and other terrorists.

This body, with a vote of 68 to 29—a very bipartisan vote—agreed on a Foreign Intelligence Surveillance Act reauthorization for a period of 6 years. The key feature of it—different from the current law—is retroactive immunity for those telecommunications companies that might have assisted the United States in gathering this intelligence. That was following the Intelligence Committee's work—again, great work; 13 to 2 was the vote in the Intelligence Committee, bipartisan—supporting that legislation. It has now been sent to the House of Representatives. All the House of Representatives needs to do is to take this bill, which has bipartisan support in the Senate, pass it, and send it to the President for his signature.